



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB0836

Introduced 2/2/2005, by Rep. Donald L. Moffitt

SYNOPSIS AS INTRODUCED:

| | |
|-------------------|---------------------------|
| 30 ILCS 550/1 | from Ch. 29, par. 15 |
| 55 ILCS 5/5-1041 | from Ch. 34, par. 5-1041 |
| 65 ILCS 5/11-12-8 | from Ch. 24, par. 11-12-8 |

Amends the State Finance Act. Requires the amount of the surety bond of any contractor making contracts for public work of any kind for the State or any political subdivision costing over \$5,000 to be conditioned for adherence to certain standards set forth in the Illinois Drainage Code. Provides that the bond is deemed to contain a provision that the principals and sureties on the bond agree that all work performed as part of the contract adheres to certain standards set forth in the Illinois Drainage Code. Amends the Counties Code. Requires the county board to have a qualified engineer estimate the probable expenditures necessary to conform to certain standards set forth in the Illinois Drainage Code in order to determine the amount sufficient for the bond required of any person who seeks the county board's approval of a map, plat, or subdivision. Amends the Illinois Municipal Code. Provides that the corporate authorities of a municipality shall require (now, may provide) that any person, firm, or corporation seeking approval of a subdivision or resubdivision map or plat post a cash bond with the municipal clerk sufficient to cover the estimate made by the municipal engineer of expenditures, including the expenditure necessary to conform to certain standards set forth in the Illinois Drainage Code. Preempts home rule.

LRB094 05956 MKM 36012 b

FISCAL NOTE ACT
MAY APPLY

HOME RULE NOTE
ACT MAY APPLY

1 AN ACT concerning surety bonds.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Public Construction Bond Act is amended by
5 changing Section 1 as follows:

6 (30 ILCS 550/1) (from Ch. 29, par. 15)

7 Sec. 1. Except as otherwise provided by this Act, all
8 officials, boards, commissions or agents of this State, or of
9 any political subdivision thereof in making contracts for
10 public work of any kind costing over \$5,000 to be performed for
11 the State, or a political subdivision thereof shall require
12 every contractor for the work to furnish, supply and deliver a
13 bond to the State, or to the political subdivision thereof
14 entering into the contract, as the case may be, with good and
15 sufficient sureties. The amount of the bond shall be fixed by
16 the officials, boards, commissions, commissioners or agents,
17 and the bond, among other conditions, shall be conditioned for
18 the completion of the contract, for the payment of material
19 used in the work, ~~and~~ for all labor performed in the work,
20 whether by subcontractor or otherwise, and for adherence to the
21 standards set forth in Article II of the Illinois Drainage
22 Code.

23 If the contract is for emergency repairs as provided in the
24 Illinois Procurement Code, proof of payment for all labor,
25 materials, apparatus, fixtures, and machinery may be furnished
26 in lieu of the bond required by this Section.

27 Each such bond is deemed to contain the following
28 provisions whether such provisions are inserted in such bond or
29 not:

30 "The principal and sureties on this bond agree that all the
31 undertakings, covenants, terms, conditions and agreements of
32 the contract or contracts entered into between the principal

1 and the State or any political subdivision thereof will be
2 performed and fulfilled and to pay all persons, firms and
3 corporations having contracts with the principal or with
4 subcontractors, all just claims due them under the provisions
5 of such contracts for labor performed or materials furnished in
6 the performance of the contract on account of which this bond
7 is given, when such claims are not satisfied out of the
8 contract price of the contract on account of which this bond is
9 given, after final settlement between the officer, board,
10 commission or agent of the State or of any political
11 subdivision thereof and the principal has been made. The
12 principal and sureties on this bond further agree that all work
13 performed as part of the contract or contracts adheres to the
14 standards set forth in Article II of the Illinois Drainage
15 Code."

16 The surety bond required by this Section may be acquired
17 from the company, agent or broker of the contractor's choice.
18 The bond and sureties shall be subject to the right of
19 reasonable approval or disapproval, including suspension, by
20 the State or political subdivision thereof concerned. In the
21 case of State construction contracts, a contractor shall not be
22 required to post a cash bond or letter of credit in addition to
23 or as a substitute for the surety bond required by this
24 Section.

25 When other than motor fuel tax funds, federal-aid funds, or
26 other funds received from the State are used, a political
27 subdivision may allow the contractor to provide a
28 non-diminishing irrevocable bank letter of credit, in lieu of
29 the bond required by this Section, on contracts under \$100,000
30 to comply with the requirements of this Section. Any such bank
31 letter of credit shall contain all provisions required for
32 bonds by this Section.

33 (Source: P.A. 93-221, eff. 1-1-04.)

34 Section 10. The Counties Code is amended by changing
35 Section 5-1041 as follows:

1 (55 ILCS 5/5-1041) (from Ch. 34, par. 5-1041)

2 Sec. 5-1041. Maps, plats and subdivisions. A county board
3 may prescribe, by resolution or ordinance, reasonable rules and
4 regulations governing the location, width and course of streets
5 and highways and of floodplain, stormwater and floodwater
6 runoff channels and basins, and the provision of necessary
7 public grounds for schools, public libraries, parks or
8 playgrounds, in any map, plat or subdivision of any block, lot
9 or sub-lot or any part thereof or any piece or parcel of land,
10 not being within any city, village or incorporated town. The
11 rules and regulations may include such reasonable requirements
12 with respect to water supply and sewage collection and
13 treatment as may be established by the Environmental Protection
14 Agency, and such reasonable requirements with respect to
15 floodplain and stormwater management as may be established by
16 the County Stormwater Management Committee established under
17 Section 5-1062 of this Code, and such reasonable requirements
18 with respect to street drainage and surfacing as may be
19 established by the county engineer or superintendent of
20 highways and which by resolution shall be deemed to be the
21 minimum requirements in the interest of the health, safety,
22 education and convenience of the public of the county; and may
23 provide by resolution that the map, plat or subdivision shall
24 be submitted to the county board or to some officer to be
25 designated by the county board for their or his approval. The
26 county board shall have a qualified engineer make an estimate
27 of the probable expenditures necessary to enable any person to
28 conform with the standards of construction established by the
29 board pursuant to the provisions of this Section and to conform
30 to the standards set forth in Article II of the Illinois
31 Drainage Code. Except as provided in Section 3 of the Public
32 Construction Bond Act, each person who seeks the county board's
33 approval of a map, plat or subdivision shall post a good and
34 sufficient cash bond, irrevocable letter of credit, surety
35 bond, or other adequate security with the county clerk, in a

1 penal sum sufficient to cover the estimate of expenditures made
2 by the estimating engineer. The cash bond, irrevocable letter
3 of credit, surety bond, or other adequate security shall be
4 conditioned upon faithful adherence to the rules and
5 regulations of the county board promulgated pursuant to the
6 authorization granted to it by this Section or by Section
7 5-1062 of this Code, and in such cases no such map, plat or
8 subdivision shall be entitled to record in the proper county or
9 have any validity until it has been so approved. If the county
10 board requires a cash bond, letter of credit, surety, or any
11 other method to cover the costs and expenses and to insure
12 completion of the requirements, the requirements shall be
13 subject to the provisions of Section 5-1123 of this Code. This
14 Section is subject to the provisions of Section 5-1123.

15 The county board may, by resolution, provide a schedule of
16 fees sufficient to reimburse the county for the costs incurred
17 in reviewing such maps, plats and subdivisions submitted for
18 approval to the county board. The fees authorized by this
19 Section are to be paid into the general corporate fund of the
20 county by the party desiring to have the plat approved.

21 For purposes of implementing ordinances regarding
22 developer donations or impact fees and only for the purpose of
23 expenditures thereof, "public grounds for schools" is defined
24 as including land or site improvements, which include school
25 buildings or other infrastructure necessitated and
26 specifically and uniquely attributable to the development or
27 subdivision in question. This amendatory Act of the 93rd
28 General Assembly applies to all impact fees or developer
29 donations paid into a school district or held in a separate
30 account or escrow fund by any school district or county for a
31 school district.

32 No officer designated by a county board for the approval of
33 plats shall engage in the business of surveying, and no map,
34 plat or subdivision shall be received for record or have any
35 validity which has been prepared by or under the direction of
36 such plat officer.

1 It is the intention of this amendatory Act of 1990 to
2 repeal the language added to Section 25.09 of "An Act to revise
3 the law in relation to counties", approved March 31, 1874, by
4 P.A. 86-614, Section 25.09 of that Act being the predecessor of
5 this Section.

6 (Source: P.A. 92-479, eff. 1-1-02; 93-330, eff. 7-24-03.)

7 Section 15. The Illinois Municipal Code is amended by
8 changing Section 11-12-8 as follows:

9 (65 ILCS 5/11-12-8) (from Ch. 24, par. 11-12-8)

10 Sec. 11-12-8. Compliance of plat with map; designation of
11 public lands; approval; bond; order; failure to act upon plat.
12 The corporate authorities of the municipality shall determine
13 whether a proposed plat of subdivision or resubdivision
14 complies with the official map. To secure such determination,
15 the person requesting the subdivision or resubdivision shall
16 file four copies of a plat thereof with the clerk of the
17 municipality, and shall furnish therewith four copies of all
18 data necessary to show compliance with all applicable municipal
19 regulations and shall make application for preliminary or final
20 approval of the proposed plat.

21 Whenever the reasonable requirements provided by the
22 ordinance including the official map shall indicate the
23 necessity for providing for a school site, park site, or other
24 public lands within any proposed subdivision for which approval
25 has been requested, and no such provision has been made
26 therefor, the municipal authority may require that lands be
27 designated for such public purpose before approving such plat.
28 Whenever a final plat of subdivision, or part thereof, has been
29 approved by the corporate authorities as complying with the
30 official map and there is designated therein a school site,
31 park site or other public land, the corporate authorities
32 having jurisdiction of such use, be it a school board, park
33 board or other authority, such authority shall acquire the land
34 so designated by purchase or commence proceedings to acquire

1 such land by condemnation within one year from the date of
2 approval of such plat; and if it does not do so within such
3 period of one year, the land so designated may then be used by
4 the owners thereof in any other manner consistent with the
5 ordinance including the official map and the zoning ordinance
6 of the municipality.

7 The corporate authorities may by ordinance provide that a
8 plat of subdivision may be submitted initially to the plan
9 commission for preliminary approval. The application for
10 preliminary approval shall show location and width of proposed
11 streets and public ways, shall indicate proposed location of
12 sewers and storm drains, proposed dedication of public grounds,
13 if any, lot sizes, proposed easements for public utilities, and
14 proposed method of sewage and waste disposal, but need not
15 contain specifications for proposed improvements.

16 The plan Commission shall approve or disapprove the
17 application for preliminary approval within 90 days from the
18 date of the application or the filing by the applicant of the
19 last item of required supporting data, whichever date is later,
20 unless such time is extended by mutual consent. If such plat is
21 disapproved, then within said 90 days the plan commission shall
22 furnish to applicant in writing a statement setting forth the
23 reason for disapproval and specifying with particularity the
24 aspects in which the proposed plat fails to conform to the
25 ordinances including official map. If such plat is approved the
26 corporate authority shall accept or reject said plat within 30
27 days after its next regular stated meeting following the action
28 of the plan commission. Preliminary approval shall not qualify
29 a plat for recording.

30 Application for final approval of a plat shall be made not
31 later than one year after preliminary approval has been
32 granted. This application must be supported by such drawings,
33 specifications and bond as may be necessary to demonstrate
34 compliance with all requirements of this statute and such
35 regulations as the corporate authorities may provide by
36 ordinance under authority of this statute. This Section is

1 subject to the provisions of Section 11-39-3 of this Code.

2 The applicant may elect to have final approval of a
3 geographic part or parts of the plat that received preliminary
4 approval, and may delay application for approval of other parts
5 until a later date or dates beyond one year with the approval
6 of the municipal authorities; provided, all facilities
7 required to serve the part or parts for which final approval is
8 sought have been provided. In such case only such part or parts
9 of the plat as have received final approval shall be recorded.

10 When a person submitting a plat of subdivision or
11 resubdivision for final approval has supplied all drawings,
12 maps and other documents required by the municipal ordinances
13 to be furnished in support thereof, and if all such material
14 meets all municipal requirements, the corporate authorities
15 shall approve the proposed plat within 60 days from the date of
16 filing the last required document or other paper or within 60
17 days from the date of filing application for final approval of
18 the plat, whichever date is later. The applicant and the
19 corporate authorities may mutually agree to extend the 60 day
20 period.

21 Except as provided in Section 3 of the Public Construction
22 Bond Act, the corporate authorities shall require ~~may provide~~
23 that any person, firm or corporation seeking approval of a
24 subdivision or resubdivision map or plat shall post a good and
25 sufficient cash bond, irrevocable letter of credit, or surety
26 bond with the municipal clerk in a penal sum sufficient to
27 cover the estimate made by the municipal engineer, or other
28 authorized person, of expenditures, including but not limited
29 to reasonable inspection fees to be borne by the applicant,
30 necessary to conform to the requirements established by
31 ordinance and necessary to conform to the standards set forth
32 in Article II of the Illinois Drainage Code and conditioned
33 upon conformance to those standards and completion of said
34 requirements in a reasonable time. The corporate authorities
35 may, by ordinance, prescribe the form of the cash bond,
36 irrevocable letter of credit, or surety bond and may require

1 surety to be approved by the corporate authorities; provided,
2 that a municipality may permit the depositing of cash or other
3 security acceptable to the corporate authorities, to complete
4 the improvements required in lieu of a bond if it shall so
5 provide by ordinance; and further provided, that no bond or
6 security shall be required to be filed until the corporate
7 authorities have approved the plat in all other respects and
8 have notified the applicant of such approval. If the corporate
9 authorities require a cash bond, letter of credit, surety, or
10 any other method to cover the costs and expenses and to insure
11 completion of the requirements, the requirements shall be
12 subject to the provisions of Section 11-39-3 of this Code.

13 If the preliminary or final plat is approved, the municipal
14 clerk shall attach a certified copy of the order or resolution
15 of approval to a copy of the plat. If the proposed plat is
16 disapproved, the order or resolution shall state the reasons
17 for the disapproval, specifying with particularity the aspects
18 in which the proposed plat fails to conform to the official
19 map. A copy of the order or resolution shall be filed in the
20 office of the municipal clerk.

21 If the corporate authorities fail to act upon the final
22 plat within the time prescribed the applicant may, after giving
23 5 days written notice to the corporate authorities, file a
24 complaint for summary judgment in the circuit court and upon
25 showing that the corporate authorities have failed to act
26 within the time prescribed the court shall enter an order
27 authorizing the recorder to record the plat as finally
28 submitted without the approval of the corporate authorities. A
29 plat so recorded shall have the same force and effect as though
30 that plat had been approved by the corporate authorities. If
31 the corporate authorities refuse to act upon the final plat
32 within the time prescribed and if their failure to act thereon
33 is wilful, upon such showing and upon proof of damages the
34 municipality shall be liable therefor.

35 The establishment of standards for compliance with the
36 Illinois Drainage Code is an exclusive power and function of

1 the State. A home rule unit may not approve or disapprove a
2 proposed plat of subdivision or resubdivision in a manner
3 inconsistent with the changes made by this amendatory Act of
4 the 94th General Assembly. This Section is a denial and
5 limitation of home rule powers under subsection (h) of Section
6 6 of Article VII of the Illinois Constitution.

7 (Source: P.A. 91-328, eff. 1-1-00; 92-479, eff. 1-1-02.)